

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the matter of)

Request for Review by)
Blackfoot Communications Inc. of)
Decision of Universal Service Administrator)

WC Docket No. 06-122

COMMENTS OF GRANDE COMMUNICATIONS NETWORKS, LLC

Grande Communications Networks, LLC (“Grande”), by its attorneys, submits these comments in response to a public notice of the Wireline Competition Bureau (“Bureau”) of the Federal Communications Commission (“FCC” or “Commission”)¹ soliciting comments on the Request for Review (“Request”) filed by Blackfoot Communications, Inc. (“Blackfoot”).² In its Request, Blackfoot asks the Commission to reverse a decision of the Universal Service Administrative Company (“USAC”) finding that Blackfoot was required to identify an interstate portion of the revenues from Blackfoot’s intrastate, fixed local service.³ Specifically, Blackfoot contests USAC’s decision that Blackfoot is required to identify and report on the annual Form 499A Telecommunications Reporting Worksheet (“Form 499A”) the interstate revenues attributable to Blackfoot’s fixed local exchange service even though Blackfoot does not charge

¹ Public Notice, Wireline Competition Bureau Seeks Comment on a Request for Review by Blackfoot Communications, Inc. of a Decision by the Universal Service Administrative Company, WC Docket No. 06-122 (rel. Aug. 5, 2011) (“Public Notice”).

² *In re: Request for Review by Blackfoot Communications Inc. of Decision of Universal Service Administrator*, WC Docket No. 06-122 (filed July 22, 2011) (“Blackfoot Request”).

³ *Blackfoot Request* at 1-3.

its fixed local exchange service customers a federal subscriber line charge (“SLC”) or any other interstate rate element associated with interstate exchange access.⁴ Grande agrees with Blackfoot that there are no Commission rules or orders obligating CLECs to charge and collect an interstate SLC on a purely intrastate service or mandating that CLECs identify and attribute as interstate any revenues from that service. For the reasons discussed below, Grande urges the Commission to grant Blackfoot’s Request.

I. INTRODUCTION AND BACKGROUND

Grande is a competitive telecommunications carrier that provides telephone, cable, and Internet services to retail end users in Texas. Grande petitioned the FCC for review of a contributor audit conducted by the Universal Service Administrative Company (“USAC”) that raises similar issues to those identified in Blackfoot’s Request. One issue in Grande’s audit concerned the reporting of Grande’s revenues from the provision of local telecommunications services to end users. Like Blackfoot, during the time period covered in Grande’s USAC audit, Grande did not have a federally-tariffed interstate SLC. Instead, Grande chose to bill its local exchange services via charges that included an intrastate monthly “customer line charge.” Grande reported the revenue from its intrastate services on line 404 of the Form 499-A, with zero revenue reported on line 405 (Subscriber Line Charges). In the audit, USAC took the position that Grande’s intrastate customer line charge was actually an interstate subscriber line charge. Grande has appealed this USAC audit finding.⁵

⁴ *Id.* at 3.

⁵ *See In re: Grande Communications Request for Review of Decision of the Universal Service Administrator*, WC Docket No. 06-122, at 9 (filed Dec. 28, 2009) (“Request for Review”).

While USAC took a slightly different position in Blackfoot's case, correctly choosing not to focus on a line item charge labeled "subscriber access charge" on Blackfoot's fixed local exchange invoices,⁶ the outcome is the same – USAC expects Blackfoot to identify a portion of its fixed local exchange revenues as interstate. In its Request Blackfoot discussed letters received from USAC stating that Blackfoot had failed to identify and report on the Form 499A an interstate portion of its fixed local exchange service revenues.⁷ Like Grande, Blackfoot also notes that it does not charge a federal SLC and does not recover from its end users the costs of providing interstate access service.⁸

II. COMMISSION RULES DO NOT REQUIRE CLECS TO CHARGE A FEDERAL SLC

Grande agrees with Blackfoot that CLECs are not obligated to charge a federal SLC. The Commission has never required CLECs to recover the costs of originating and terminating interstate toll calls from their end user telephone subscribers.⁹ Specifically, the Commission's jurisdictional separations regime has never been applied to CLECs nor has the Commission established a mechanism for CLECs to apportion their costs for originating and terminating interstate calls.¹⁰ As Grande noted in its Petition on this issue,¹¹ part 69 of the

⁶ Blackfoot noted in its Request that its customer invoices include a line item charge labeled "subscriber access charge" but Blackfoot noted this was not an interstate SLC and the letters Blackfoot received from USAC did not appear to address this charge at all. *Blackfoot Request* at 3 and Attachment I.

⁷ *Blackfoot Request* at 2-3.

⁸ *Id.* at 6.

⁹ *Blackfoot Request* at 6. See also *In re: Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Universal Service Contribution Methodology; Petition of the RICA members for Declaratory Ruling Regarding Imputation of Interstate Revenue*, CC Dkts 96-45, 98-171; WC Dkt. 06-122 (filed April 26, 2011) ("RICA Petition").

¹⁰ *Id.*

Commission's rules contains two provisions that mandate the collection of a subscriber line charge: section 69.104 states that the rule "is applicable only to incumbent local exchange carriers not subject to price cap regulation" and section 69.152 governs the collection of an interstate SLC by price cap carriers.¹² Only dominant local exchange carriers are subject to price cap regulations.¹³ Accordingly, neither provision applies to CLECs.

Blackfoot also notes that the company classifies revenues from its local exchange service provided within a single state as purely intrastate revenues.¹⁴ Blackfoot then argues, correctly, that no Commission order requires CLECs to allocate any portion of their intrastate revenues as interstate.¹⁵ Blackfoot has chosen to bill and collect from providers of interstate interexchange service a tariffed interstate access service charge for Blackfoot's exchange access service and specifically declined to recover the costs of providing interstate interexchange access by any method other than its tariffed charge.¹⁶ Grande agrees with Blackfoot's position. A CLEC is permitted to determine that its federally tariffed interstate access charges fully recover its costs for providing interstate access and that none of its intrastate local exchange service revenues are compensation for providing interstate access. Because it is not mandatory that CLECs recover any interstate costs from their subscribers, a CLEC's intrastate revenues will not

¹¹ *In re: Grande Communications Request for Review of Decision of the universal Service Administrator*, at 9, WC Docket No. 06-122 (filed Dec. 28, 2009) ("Grande Petition").

¹² 47 C.F.R. §§ 69.104(a), 69.152.

¹³ 47 C.F.R. §§ 61.3(ee), 61.41(a)(2).

¹⁴ *Blackfoot Request* at 6.

¹⁵ *Blackfoot Request* at 6.

¹⁶ *Id.*

necessarily include revenues attributable to an interstate SLC and the CLEC would not have any interstate SLC revenues to report on its Form 499A.¹⁷

III. USAC ERRONEOUSLY REQUIRES AN INTERSTATE COMPONENT TO INTRASTATE LOCAL EXCHANGE REVENUES

Grande agrees with Blackfoot that USAC's attempts to require Form 499A filers to identify an interstate portion of local exchange revenues is not supported by, and appears to reflect a misunderstanding of, the Commission's rules. In its Request, Blackfoot explains that there is no federal rule that obligates CLECs to allocate local exchange service revenues as interstate.¹⁸ A CLEC may determine that none of its local exchange revenues include a component of the cost of providing interstate service. Similarly, a CLEC may decide, as Blackfoot has done, that its per-minute access charges are sufficient to compensate it for the cost of providing interstate service, such that there is no need to collect an "interstate component" via other service revenues.¹⁹

Importantly, so long as the CLEC is consistent in its allocation decisions, neither USAC nor the FCC can alter its Form 499A reporting. Grande, for example, treated its local exchange revenues (including the "customer line charge") as intrastate service revenue for all purposes. Blackfoot similarly treated all of its fixed local exchange service revenues as purely intrastate, reporting the revenue as intrastate revenue and paying applicable state taxes on the

¹⁷ As Grande pointed out in its comments supporting the *RICA Petition*, the Commission and USAC have acknowledged that CLECs are not required to collect a federal SLC and may choose to charge a state SLC. CLECs are given significant latitude in how they recover their costs and are permitted to assess intrastate SLCs. The Commission has acknowledged that CLECs can charge state SLCs. FCC Consumer Facts: Understanding Your Telephone Bill at <http://www.fcc.gov/guides/understanding-your-telephone-bill> (visited June 1, 2011).

¹⁸ *Blackfoot Request* at 5.

¹⁹ *Blackfoot Request* at 2 ("BCI does not intend or purport to recover the cost of providing access to interstate interexchange service other than through its applicable access charges.")

revenues.²⁰ Neither USAC nor the FCC can compel a CLEC to reclassify intrastate revenues to the interstate jurisdiction.

It is apparent that in Blackfoot's case, as well as those of RICA and Grande, USAC is relying upon a statement in the Form 499A Instructions that purports to require all carriers to include an interstate portion of local exchange service revenues to the interstate jurisdiction.²¹ USAC's clearly expects that CLECs always will report interstate SLC revenues and its efforts to require CLECs to report such revenues – including by requiring CLECs to identify portions of purely intrastate revenues as interstate - reflects a reading of this Instruction that would be unlawful. The Instruction does not apply to all carriers. Rather, for the reasons explained above, this instruction applies only to incumbent LECs that are subject to the SLC rules in Part 69. The Bureau should revise this Instruction in future forms to make clear that it applies only to incumbent LECs, not to CLECs.

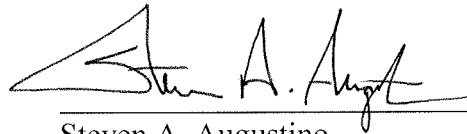
²⁰ *Blackfoot Request* at 6.

²¹ *See, e.g.,* 2011 Form 499A Instructions at 15. *See also, Blackfoot Request* at 3-4; *RICA Petition* at 2; *Grande Petition* at 11-12.

IV. CONCLUSION

For the foregoing reasons, the Commission should grant Blackfoot's Request. CLECs are not required to collect a federal or interstate SLCs and USAC may not force CLECs to declare, on the Form 499A, a portion of the CLEC's intrastate revenues as attributable to an interstate SLC.

Respectfully Submitted,



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